

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FABIAN VILLARREAL,

Plaintiff,

Case No. 12-cv-12041

vs.

HON. GEORGE CARAM STEEH

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION (DOC. #13),
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. #9),
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DOC. #12),
AND AFFIRMING THE FINDINGS OF THE COMMISSIONER

On May 7, 2012, plaintiff filed a complaint for judicial review of a decision by the Commissioner of Social Security ("Commissioner") denying plaintiff's application for benefits. The matter was referred to Magistrate Judge Michelson. The parties filed cross-motions for summary judgment. On July 1, 2013, Magistrate Judge Michelson issued a report and recommendation on the cross-motions for summary judgment (Doc. #13). In her report, Magistrate Judge Michelson recommends plaintiff's motion for summary judgment should be denied, defendant's motion for summary judgment be granted, and the findings of the Commissioner affirmed.

In his motion for summary judgment, plaintiff took issue with the ALJ's questioning of the VE and the VE's testimony. As the magistrate judge noted, plaintiff's counsel did not cross-examine the VE at the administrative hearing. The ALJ's assessment of plaintiff's credibility concerning both his pain and his diabetes symptoms was necessarily a part of

his questioning of the VE as well as his conclusions. The court agrees with Magistrate Judge Michelson that substantial evidence supported the determination that plaintiff is not disabled. Concerning the weight attributed to the reporting agency's medical examiner, the court again agrees with the magistrate judge that his opinion is largely consistent with the record, and that the ALJ's determination was supported by substantial evidence.

Magistrate Judge Michelson specifically stated that any objections to her report must be filed within 14 days of service, and that failure to file such objections constituted a waiver of any further right of appeal. See Thomas v. Arn, 474 U.S. 140, 155 (1985). Plaintiff did not file any objections.

This Court hereby adopts Magistrate Judge Michelson's well-reasoned July 1, 2013 report and recommendation (Doc. #13). Plaintiff's motion for summary judgment is **DENIED**, and defendant's motion for summary judgment is **GRANTED**, and the findings of the Commissioner are **AFFIRMED**.

IT IS SO ORDERED.

Dated: August 1, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 1, 2013, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk